SCOTT McINNIS
3D DISTRICT, COLORADO

COMMITTEE ON WAYS AND MEANS

COMMITTEE ON RESOURCES

CHAIRMAN
SUBCOMMITTEE ON
FORESTS AND FOREST HEALTH

Congress of the United States
House of Representatives
Washington, DC 20515–0603

WASHINGTON OFFICE:
320 CANNON BUILDING
WASHINGTON, DC 20515–0603
(202) 225–4761
FAX: (202) 226–0622

DISTRICT OFFICES:
134 WEST B STREET
PUEBLO, CO 81003
(719) 543–8200
FAX: (719) 543–8204

225 NORTH 5TH STREET
SUITE 702
GRAND JUNCTION, CO 81501
(970) 245–7107
FAX: (970) 245–2194

1060 MAIN AVENUE
102
DURANGO, CO 81301
(970) 259–2754
FAX: (970) 259–2762

526 PINE STREET
SUITE 111
GLENWOOD SPRINGS, CO 81601
(970) 928–0637
FAX: (970) 928–0630

March 14, 2001

Mr. John Nannes
Acting Assistant Attorney General
Antitrust Division
U.S. Department of Justice
Washington, DC

Dear Acting Assistant Attorney General Nannes,

Thank you for your attention to this correspondence concerning the rapidly declining state of competition in the airline industry. I am writing for a number of reasons: (1) to express my dissatisfaction with the widespread shortage of meaningful competition in the airline industry; (2) to signal my deep-seated opposition to the proposed merger between United Airlines (United) and U.S. Airways (US Airways), based on the chilling effects it would have on competition in an industry where consumer choice is already conspicuously limited; (3) recognizing that the Department of Justice (DOJ) may in fact approve the United-US Airways deal and other pending mega mergers in the industry – in spite of all compelling evidence weighing against these transactions – I will recommend specific "conduct remedies" that DOJ should insist upon as a precondition of approving any major acquisition; and (4) to request that DOJ conduct an immediate antitrust inquiry at DIA probing the legality of United's monopoly market power and its anti-competitive behavior.

COMPETITION IN THE AIRLINE INDUSTRY

From the vantage of consumers, the state of competition in the airline industry is at an all-time low. For proof, you don't need to look any further than the condition of airline travel last summer and early fall, a travel season considered by many to be the worst in recent memory. The vast majority of passengers who traveled during this period encountered outrageously long ticket lines, protracted flight delays, chronic cancellations, and lost or misplaced baggage. Airline travel across the nation was an unmitigated disaster. I could literally fill your office with letters I've received from constituents who missed a brother's wedding, or a grandparent's funeral, or families who spent their vacation at Denver International or Chicago O'Hare instead of Disneyland.

Frustratingly, this dramatic decline in quality of service coincided with an increase in the price of airline fares. While some view this inverse relationship as economically counter intuitive, it's not. In fact, the trend is not at all uncommon in sectors where market share is overwhelmingly controlled by one or a few vastly powerful market players. This seemingly incongruous relationship, where price is on the upswing as service diminishes, is the result of a monopoly. In my opinion, that's exactly what we have in the airline industry – regional monopolies that exert undue control over air travel in America.

In the last 20 years, the airline industry has become entrenched in the hub-and-spoke network, a system that the major carriers have perniciously, if adroitly, used to broaden and solidify their market base by warding off competition. Paul Stephen Dempsey, a leading expert in Transportation Law who heads up the University of Denver's Transportation Law Program, describes the origins of the hub-and-spoke system, and the competitive advantages that major carriers derive from it, like this:

> Since deregulation, all major airlines but one (i.e. Southwest) have gravitated to the hub-and-spoke means of distribution. Though hubbing increases costs by lowering aircraft, gate and labor utilization and increasing fuel consumption, airlines have been attracted by their revenue enhancement potential. According to Lehman Brothers, 'Airlines that control a greater percentage of their hubs' gates obtain significant benefits in terms of scheduling and flexibility and insulation from new competition.' Adding a spoke to an existing hub geometrically increases the number of city-pair markets an airline can sell, and adds incremental connecting passengers to other spokes at the hub, thereby improving load factors. Hub dominance also enables the dominant airline to increase the number of city-pair monopolies that radiate from the hub, allowing monopoly fares to be imposed on origin-and-destination passengers.[1]

The acute ability of the major carriers to manipulate this hub-and-spoke framework has transformed the once competitive airline industry into one that is concentrated in the inordinately powerful hands of companies like United, American, Delta and Northwest. According to the Herfindahl-Hirschman Index (HHI), the widely accepted measure of market concentration employed by DOJ when considering antitrust actions, 32 of America's 50 largest airports are deemed "highly concentrated." By "concentrated" it is meant that there are a relatively small number of competing entities in a given market, leaving one immensely powerful player to dominate market activity. According to this yardstick, markets in which the HHI is in excess of 1800 points are considered to

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[1] Paul Stephen Dempsey: Airport Monopolization & Megacarrier Predation: Barriers to Entry and Impediments to Competition (June, 2000).

be highly concentrated.[2] Here's how some of America's most traveled airports measured up: Dallas Love Field -- 8,985; Charlotte – 8,124; Pittsburgh – 7,464; Denver – 4,671; Philadelphia – 4,574; Washington Dulles – 3,683; San Francisco – 3,487; Chicago O'Hare – 3,469. These airports range anywhere from 2 to 5 times the level deemed highly concentrated by the DOJ.[3] These numbers illustrate both the raw strength of major carriers and the lack of meaningful competition in our nation's major airports.

The numbers are even starker when you consider the market share that airlines control between some of America's largest city-pairs. For example, United controls 77.63% of flights between Denver International Airport (DIA) and Chicago O'Hare Airport -- both United hubs -- while American controls 80.87% of travel between Boston and its hub in Miami.[4] Worse still, US Airways is responsible for 99.7% of the flights between Pittsburgh and Los Angeles.[5] Viewed more broadly, American Airlines controls 70% of all passengers who travel nonstop in city-pairs based out of Dallas Fort Worth, an American hub.[6] Similarly, Delta Airlines, the nation's third largest carrier, controls 79.3% of flights between cities served out of its Atlanta hub. Needless to say, passengers flying in this market environment don't have the luxury of choosing another airline, even when service is unreliable or fares reach unreasonable levels. In situations like these, which are the rule and not merely exceptions to it, travelers are at the whim of the major airlines' bottom line interests.

Not surprisingly, the raw monopoly power of the major airlines has had a textbook effect on the price of air fares and on the quality of service rendered. According to Mr. Dempsey, "Every independent study of pricing (that is, every study not underwritten by the major airlines) of pricing at concentrated airports reveals a significant monopoly premium being charged consumers – a 27% premium according to GAO or a 19% premium according to the Department of Transportation."[7] At the same time, flight delays and cancellations continue to surge at inexcusably high levels. According to the Department of Transportation's December 2000 figures, nearly 40 percent of flights executed by United and American, the nation's two largest carriers, did not arrive on time. Worse, 1 in 10 American flights and 1 in 14 United flights were cancelled during that same period.[8] Last year, amid the travel chaos of summer and fall, United cancelled an astonishing 700 flights nationwide in the period of one weekend,

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[2] U.S. Department of Justice and the Federal Trade Commission: Merger Guidelines § 1.51.
[3] CIBC World Markets: Airline Competition at the 50 Largest U.S. Airports – Impact of Proposed Mergers
[4] AviationDataBanks.com
[5] General Accounting Office
[6] U.S. v. AMR Corporation (Civil Action No.: 99-1180-JTM): Complaint (May 13, 1999).
[7] Paul Stephen Dempsey: Airport Monopolization & Megacarrier Predation: Barriers to Entry and Impediments to Competition (June, 2000).
[8] U.S. Department of Transportation: Air Travel Consumer Report (February 2001).

including 180 out of DIA.[9] These numbers are directly attributable to the out-and-out lack of competition in this sector.

I want to briefly explore one important corollary to the competition issue. As you know, four of the industry's most widely used carriers are currently entangled in high-stakes labor negotiations, each of which run the risk of deteriorating into massive strikes in the immediate future. Just this month, President Bush took the unusual step of ordering Northwest Airline's mechanics to keep working during a 60 day cooling-off period in negotiations with management, just as Northwest's 8,000 mechanics readied themselves for a strike. The President's affirmative leadership in preventing an immediate walkout deserves real credit, but there is no guarantee that the mechanics won't move forward with their strike plans when the 60-day period expires. Similarly, United is at an impasse with its mechanics, who are carefully monitoring progress in Northwest's contract negotiations as they plan their own course of action. If Northwest's mechanics ultimately strike, United's mechanics could well follow suit. Negotiations between Delta Airlines and its pilots reached critical mass recently when the union voted to authorize a strike if a settlement with management is not reached soon. And American Airlines is at loggerheads with its flight attendants, with labor threatening to strike if progress does not materialize soon.

Labor-management conflict is an unavoidable part of any business, but the problem in the airline industry is seriously complicated by the lack of real competition. If consumer's had a choice in airline providers between city-pairs, the implications of a mid-summer strike by four of the major airlines would be less ominous. As it is, with airline competition virtually non-existent in most places, travelers stand to suffer another season of delays, cancellations and inconveniences unless all of these labor disputes are promptly settled, a proposition that seems unlikely. The problem here is obvious: by excluding viable competition in most major airports, the airline industry leaves itself – and consumers – gravely vulnerable to the normal give-and-take of the business world, including labor-management disputes.

Of course, an airline controlling massive sums of market share, in and of itself, does not constitute a monopoly. It's the major airlines' predatory means of protecting that vast market share that raises serious legal questions.

While all of the major airlines have implemented exclusionary schemes in one form or another to preserve their market standing, none have done so more methodically nor brazenly nor effectively than United. Nowhere has this been clearer than in the State of Colorado.

[9] Susan Carey: "United Grapples with Summer of Widespread Discontent," Wall Street Journal (August 8, 2000).

At DIA, United has effectively strangled out competition from carriers that, in a fair and open competitive environment, would otherwise prove viable. In response to competitive threats at DIA over the years, United has implemented an array of predatory techniques that have effectively removed meaningful competition from the hub. In so doing, United has built itself a Denver-based monopoly.

The carriers most widely-used and effective anti-competitive practices, generally used against low cost jet carriers that enter DIA and other United hubs, are the following: (1) add sheer capacity and flight frequency to deny competitors realistic or achievable break-even load factors; (2) drop prices to below cost levels, a viable ploy because the carrier cross-subsidizes any short-term losses with the robust earnings achieved at other hub monopolies; (3) refuse competitors nondiscriminatory access to its network, thus allowing the carrier to monopolize the connecting passenger market flowing into its hubs; (4) bias its computer reservations system against more convenient competitive offerings; (5) paying travel agents commission overrides to steer business to United and away from competitors; and (6) enter into "exclusive dealing" arrangements with corporate purchasers.[10] A seventh technique, typically employed before the previous six, is that United enters into sweet-heart agreements with affected airport authorities that give the carrier broad influence over key operational decisions at its hubs.

Armed with these techniques, United has, for all intents and purposes, snuffed-out competitive threats from carriers that lack the market strength and resources to resist United's heavy-hand. As of the end of 1999, United controlled 68.8% of air travel out of DIA, giving it near complete control of air travel in and through the Rocky Mountain West.[11] With it, has come unbridled monopoly power and the ability to raise prices and erode service in any manner it sees fit.

As Adam Smith noted long ago, a "monopoly is a great enemy to good management."[12] Airline travelers who have been forced to endure United's monopoly at DIA would no doubt agree with Smith's assessment.

THE UNITED – US AIRWAYS MERGER

Given the fundamentally dismal state of competitive choice in the airline industry today, it would be unwise, imprudent and contrary to the best of interests of airline travelers in America for DOJ to approve the proposed mega merger between United and US Airways, the world's first and sixth largest airlines respectively. The newly formed carrier (new United) would control nine hubs, controlling over 50% of market share in seven. Nationally, the proposed merger

[10] Paul Stephen Dempsey: Unfriendly Skies Over Colorado: United Airlines' Fortress Hub Monopoly at Denver
[11] CIBC World Markets: Airline Competition at the 50 Largest U.S. Airports – Impact of Proposed Mergers
[12] Adam Smith, Book 1, Chapter 11, Wealth of Nations

would increase industry concentration by an alarming 26%. Already beset by a competitive vacuum, the last thing this industry needs is to strengthen the standing of any member of America's airline oligopoly, including United.

Specifically, I oppose the merger for three reasons.

First, the United-US Airways merger would broaden United's market strength at DIA, which in turn would have a direct negative effect on competition between specific city-pairs controlled by new United out of DIA. For example, new United would account for 97% of flights between Denver and Philadelphia, as opposed to 64% currently.[13] Likewise, United would gain control of 98.3% of the Denver to Pittsburgh city-pair, and 99.4% of the Denver to Charlotte market. Taken together with the fact that United would continue to execute 77.63% of flights between Denver and Chicago, 86.5% of flights between Denver and L.A. X, 89.2% of flights between Denver and San Francisco, and 85.4% of flights between Denver and Seattle, it becomes clear that this merger would consolidate too much market power in one airline carrier, especially one that has been justifiably described as a "wealth maximizing monopolist."[14] Further underscoring that point, recent HHI estimates show that market share consolidation for new United at DIA would increase 4.6% over its present level if the US Airways acquisition moves forward.[15] While this number pales in comparison to the increase that other airports would experience under the merger – for instance, Washington Dulles' relative consolidation with new United would increase an astounding 51.5%– this amplification of market consolidation at DIA would nonetheless perpetuate United's monopoly power in the West.

Let me be clear: any transaction that strengthens United's monopoly force at DIA, no matter how big or small, would be harmful to the interests of travelers. The government's actions should be focused on loosening United's monopoly, not enhancing it.

Second, from a macro-economic perspective, the merger also raises a number of elemental concerns. As I noted earlier, United has proven prolific in cross-subsidizing losses incurred while engaging in anti-competitive practices, notably increasing frequency of flights between city-pairs and artificially under-selling the competition at a price below cost. Because of its aggregate profits, United can afford to take a financial hit in the short-term toward the end of crowding out competition in specific city-pairs. In fact, from United's monopolistic perspective, it's a sound and perfectly rational investment. Once these predatory schemes work their will and competition in a city-pair is expunged, United knows it can quickly exceed its losses by raising fares to a level above of what a normal competitive market would bear. According to Mr. Dempsey, "United and its code-

[13] Source Data from General Accounting Office
[14] Paul Stephen Dempsey: Unfriendly Skies Over Colorado: United Airlines' Fortress Hub Monopoly at Denver
[15] CIBC World Markets: Airline Competition at the 50 Largest U.S. Airports – Impact of Proposed Mergers

sharing 'United Express' affiliates . . . have been extremely successful in recovering short term losses (incurred by under-selling competition) by raising fares sharply in markets which competitors have exited."[16]

With this understanding, it would be a fundamental error for the DOJ to consider the merits of this merger solely on a city-to-city basis. By strengthening its overall market presence, which in turn promises to bolster the carrier's bottom-line earnings, United will have an enhanced ability to stymie competition in every airport it serves by under-cutting and under-selling the competition. Because new United would doubtlessly encounter increased profits, the carrier could afford to under-cut and under-sell competition more often and in more places than in the present.

One other critical macro-economic consideration -- my third reason for opposing United's acquisition of US Airways -- is the unsettling flurry of mega mergers that the United-US Airways deal has and likely will continue to trigger. In a recent report evaluating the merits of the merger, the General Accounting Office encapsulated the problem like this:

> . . . New United would so alter the existing balance in the domestic market that, for the other major U.S. airlines to compete successfully, they would have little or no choice but to consolidate as well . . . According to an analysis performed for one of the airlines, new United would have 97% more daily departures than its closest competitor, Delta (8,401 compared with 4,260). An analysis for another airline using available seat miles showed that the new United would be almost 50 percent larger than its closest competitor (American). Consequently, the officials said that unless their airlines also merged, they would be unable to compete with the new United.[17]

This warning of a chain reaction turned out to be more than idle speculation on the part of GAO. Earlier this year, in the wake of the United-US Airways announcement, American Airlines, the nation's second largest carrier behind United, announced its plan to acquire the nation's eighth largest airline, Trans World Airline. To help smooth the way for the United merger now pending before DOJ, and in turn bolster its own strength in a number of city-to-city markets, American has agreed to acquire 20 percent of US Airways, including select planes, gates and landing slots. "American would take a major stake in US Airways' shuttle service serving New York, Washington and Boston in addition to a nearly 50 percent stake in start-up airline DC Air. By sharing the US Airways Shuttle with United and buying a large stake in DC Air, American will be helping

[16] Testimony of Paul Stephen Dempsey, House Committee on the Judiciary (November 5, 1997)
[17] General Accounting Office: Aviation Competition – Issues Related to the Proposed United-US Airways Merger (11).

United make the case to regulators that United's purchase of US Airways will not destroy competition in the Washington market."[18]

As an important aside I wonder, does it strike DOJ as curious that America's two largest carriers -- companies that are purportedly competitors -- are now working arm-in-arm with another to gain government approval of their respective acquisitions? It shouldn't. American is anxious for the United merger to move forward because it creates the illusion that an enlarged American is needed to compete with new United. But since the airlines' infrequently compete with one another in specific city-to-city markets, almost never competitively engaging one another in their respective hubs, DOJ should reject this transparent assertion out of hand. American's acquisition of TWA in no way mitigates the negative consequences that the proposed United merger would bring into being. Simply put, a stronger American together with a stronger United still spells big trouble for the air traveling public.

Further compounding the situation, if government regulators approve the now excessively entangled United and American acquisitions, Delta, the nation's third largest carrier, will have little choice but to make a bid for either Northwest or Continental, the country's fifth and sixth largest carriers respectively. "Other airlines will be forced to combine, be carved up, or be put out of business by the onslaught brought on by the United and American cartel," according to Continental Chairman and CEO Gordon Bethune.[19] If Delta were to acquire either Continental or Northwest, the top three carriers would control nearly 85 out of every 100 U.S. airline seats. Currently, the top three carriers control 56% of U.S. traffic.[20]

If these and other as yet unborn mergers are allowed to move forward, the nation's airline landscape will be almost entirely dominated by three or four regional cartels, and the only thing more uncommon than consumer choice will be an inexpensive airline ticket.

This looming wholesale consolidation in the airline industry, set into motion by the United-US Airways merger, is categorically not in the best interest of consumers. It is a nightmare scenario for the American airline traveler that DOJ should kill in its tracks, consistent with its duties under federal antitrust law. For these reasons, again, I urge the DOJ to block implementation of the United-US Airways merger, and all subsequent and inter-related mergers that would unduly alter the competitive landscape in the airline industry.

(Note: The empirical case against the United-US Airways merger is explored in greater depth in the report)

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[18] Greg Griffin: "American Airlines' deal to buy Trans World Airlines and some US Airways assets may include a perk for Denver travelers," The Denver Post (January 9, 2001).
[19] Daily Reports for Executives: "United, American Deal Called Major Threat to Success of U.S. Airline Deregulation." Nancy Ognanovich (February 8, 2001).
[20] Time, "Slicing Up the Sky." John Greenwald: February 20, 2001

PROPOSED REMEDIES

Having signaled my strong opposition to further consolidation in the airline industry, let me say this: if DOJ moves in the direction of approving the merger, it should impose strict sanctions on the arrangement, in the form of conduct remedies, to ensure basic standards of fairness and competition on markets otherwise susceptible to United's anti-competitive disposition. If left to its own devices, United has proven time and time over that it will use its overwhelming marketplace muscle to smother competition. If it is to approve the merger, then, DOJ would serve the interests of the American traveler best by mandating as a precondition of approval that United desist in using various predatory techniques that have and will continue to stifle meaningful competition so long as they are used.

The following conduct remedies provides a baseline set of criteria that would, if implemented, reduce barriers to entry for would-be competitors in the airline industry. I know that DOJ is considering other forms of relief – including additional conduct remedies and forced divestitures -- and I strongly encourage you to explore all of these to the extent they lessen United's market strength and promote competition in this sector.

Code-Sharing and Baggage Agreements.

United has effectively monopolized connecting traffic at DIA and other hubs by refusing competitors access to its code-sharing and baggage network. DOJ could diminish United's monopoly strength by compelling United and its so-called "alliance" partners to open up their code sharing and baggage networks as a condition of the merger's approval.

In brief, code sharing is a commercial agreement between two or more carriers that allows an airline to put its two-letter identification code on the flights of another airline as they appear in the computerized reservations systems (CRS), the network of airline reservation computers used by travel agents to book flights.[21] Code sharing arrangements generally include joint baggage agreements, through which the cooperating airlines agree to process one another's baggage on connecting flights.

Code sharing and baggage agreements establish de-facto alliances between the carriers, coalition's typically consisting of smaller commuter carriers teaming up with a larger carrier like United. Generally, the major carriers enter into code sharing and joint baggage agreements with smaller commuter carriers that service outer-lying rural areas as a means of controlling the connecting flight markets into its hubs from more remote locations. At the end of 2000, United had code sharing and baggage agreements with Air Wisconsin, Atlantic Coast

[21] U.S. Airways (www.US Airwaysways.com)

Airlines, Great Lakes Aviation, Gulfstream International, and Sky West Airlines. United's alliance partners typically operate under the alias "United Express."

Since deregulation, United has aggressively maneuvered to establish exclusive alliances with smaller airline companies around the nation, building a vast feeder network that has given United near total dominance of connecting traffic through its hubs. United has systematically denied competitors access to these agreements.

The anti-competitive implications associated with United's refusal to enter into code sharing and baggage agreements with competing airlines are numerous, but I will focus on two. First, the CRS has a built in bias against connections which do not share a designator. Remember, under their code sharing alliance, United and United Express share a two letter designator. The practical effect of the bias is that United Express flights connecting with United flights receive a significantly higher priority in the CRS than, say, a United Express flight connecting with Frontier. When booking flights, then, travel agents view the United Express–United connection as the best connecting alternative and usually book tickets accordingly. Even though United and United Express are two distinct companies – to the same degree that Frontier and United Express are independent corporate entities -- they are treated as the same by the CRS because of their code-sharing agreement. "Without a code sharing agreement, the United-Frontier connection is shown as what it truly is – an interline connection between United and Frontier. Unfortunately, the CRS system of which United is principal owner saddles the displays of all interline connecting flights with the equivalent of an artificial and astounding 24 hours, which is added to the true elapsed time of the flight."[22] This capricious quirk in the reservation system takes a tremendous toll on non-alliance carriers, like Frontier, seeking to viably compete at the hub of a major airline.

Second, by barring their United Express alliance partners from entering into joint baggage agreements with other carriers, United has established an enormous competitive barrier that, too often, potential competitors cannot exceed.

Think of it from the perspective of the passenger. Let's assume a passenger is flying from Grand Junction, Colorado to Washington, DC via Denver. The passenger will fly to Denver on United's code sharing partner United Express, the only carrier from Grand Junction to DIA. From Denver, the passenger can choose to connect to Washington on either United or Start-Up X, assuming they know about the CRS bias against Start-Up X. If the passenger chooses to fly Start-Up X, he will be forced to pick-up his baggage at DIA and re-check it at Start-Up X's counter, again, because United will not allow United Express to process Start-Up X's baggage under the terms of their exclusive code

[22] Paul Stephen Dempsey: Unfriendly Skies Over Colorado: United Airlines' Fortress Hub Monopoly at Denver (page 14).

sharing agreement. At DIA, as with many other airports, this is no small challenge because the baggage check and concourses are in completely different structures. If, on the other hand, the passenger chooses to fly United, the passenger can simply deplane at DIA and re-board on the Denver-Washington flight, thanks to the reciprocal baggage agreement that allows United Express to directly transfer the passenger's baggage on the connecting United flight.

In this environment, it seems highly improbable that a consumer would ever choose Start-Up X over United when connecting through Denver. Even if Start-Up X's fares are less costly than United, it is unlikely that the passenger would opt-against United when connecting under these all too common conditions.

It is plainly evident that United's exclusive code sharing alliances are a principal obstacle to real competition at major airports like DIA. It is equally clear that United denies non-discriminatory access to its code sharing network for the express purpose of choking-off the competition of carriers like Frontier. If these barriers were stripped away by DOJ as a precondition of approving the United-US Airways merger, start-up carriers could more viably compete with United in the connecting traffic market.

Forcing United to open up its code sharing system is not without precedent in other industries. In the 1980's, DOJ forced AT&T to divest itself into seven regional holding companies, and one long distance carrier. This, after AT&T lost a multi-million dollar lawsuit to based on its refusal to allow MCI nondiscriminatory access to its network.[23]

The comparison is a sound one. Like AT&T, United is denying all existing and potential competitors access to its network – in United's case, access to its code sharing network. And like AT&T, United will continue to enjoy broad predatory power until the DOJ puts the clamp on the company's anti-competitive practices. The time has come for DOJ to do exactly that.

I urge DOJ to do everything in its power to forcibly open United's code sharing and baggage network. Moreover, DOJ should insist that United and the other major carriers retool CRS so that a computer quirk doesn't undermine meaningful competition.

Gate Availability

According to the Competition Plan for Denver International Airport, submitted September 6, 2000, DIA has thirteen common-use gates available for airline use (page 16). However, eight are designated as international use gates on Concourse A, and four are designated as domestic located on Concourse C.

[23] Ibid., page 13

That leaves only one gate designated domestic use on Concourse A, which is where United Airlines' competitor Frontier Airlines is based. This leaves very little room for Frontier or other carriers to grow without significant costs of construction. While there currently is gate availability at DIA, no one competitor should effectively prevent expansion of other competitors from expanding into the nearby gates, by leasing all gates available for expansion in a concourse and forcing a huge capital cost on competitors wishing to expand.

I urge DOJ to ensure that gates remain available to all competitors at DIA and other airports, and that no airline takes actions that have the effect of preventing reasonable expansion and competition by other airlines.

ANTITRUST REVIEW OF UNITED AT DIA

It is an indisputable fact that United controls a regional monopoly at DIA. As I have demonstrated in the preceding pages, meaningful competition is virtually non-existent out of Denver according to every measure. The logical consequence of this competitive deficit is that travelers at DIA have been forced to pay among the highest fares in the country while enduring glaringly inadequate air service.

As a conservative, I generally don't advocate government intervention in the private market. But where a monopoly unduly dominates business activity in a given sector, and where consumer injury is manifest, government has a fundamental obligation to intervene. Monopolies cannot be left unchecked in a marketplace where consumers are powerless to respond.

Our nation's antitrust laws contemplate exactly the anti-competitive situation that plagues the airline industry. These laws grant broad authority to the government to seek redress on behalf of consumers, whether it's in the courts or through negotiated settlement. The time has come for DOJ to use these laws to break United's monopoly stronghold at DIA by restoring an atmosphere where other carriers can viably compete.

Currently, DOJ is pursuing an antitrust action against American at Dallas-Fort Worth National Airport (DFW), a situation with striking similarities to United at Denver. Like United at DIA, American controls overwhelming market clout at DFW, leaving little or no choice for consumers flying to city pairs that emanate from the American hub. And like United at DIA, American has successfully exercised a number of anti-competitive techniques for the express purpose of stifling consumer choice at DFW. The case against American at DFW is the case against United at DIA. *(Note: The American-DFW action is more thoroughly explored in the subsequent report.)* Accordingly, I urge DOJ to immediately begin an antitrust review of United at DIA.

An appropriate starting point for your anti-trust review is United's contract with the City of Denver, DIA's airport authority. The contract has been instrumental in the carriers until now successful efforts to monopolize airline travel out of DIA.

When Denver negotiated the terms of the agreement, it gave United sweeping control over the airport's operations, on issues ranging from the essential to the mundane. A former airport employee recently told me that United's authority extends so far that the carrier actually has veto power over any signage changes in the airport's parking lot. United's influence also extends to more critical airport operations, including baggage handling and gate allocation. The closer you look, the clearer it becomes that DIA is United's airport more than it is the State of Colorado's.

To a substantial degree, the blame for this onerous contract rests with the City of Denver. The reality is that the City of Denver allowed itself to be strong-armed by United. But while the City of Denver should be held responsible for the contract's considerable inadequacies, airline travelers in Colorado and throughout the West should not suffer because of the City's fecklessness at the bargaining table. Accordingly, the contract -- like United's general market activities at DIA -- merits careful review.

Thank you in advance for your consideration of these important points. I hope that DOJ will aggressively move to restore competition in the airline industry.

Sincerely,

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Scott McInnis
Member of Congress

cc: Secretary Norman Mineta, U.S. Department of Transportation
Attorney General Kenneth Salazar, State of Colorado
Mayor Wellington Webb, City of Denver
James Goodwin, Chairman and CEO, UAL Corporation